

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 23 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SEVANTIBEN SAKHARAMBHAI GAMIT

Versus

BALUBHAI UMARSING GAMIT

Appearance:

MR DR DHIMAR for Petitioner

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/01/98

ORAL JUDGEMENT

Heard Learned Counsel for the parties and perused the judgement of the Lower Appellate Court. Both the Courts below under concurrent findings had declared the plaintiff to be owner of the property and son of his father. The Learned Counsel for the appellant has formulated four substantial questions of law in the Memo of Appeal. I have gone through these questions.

2. Question No.1 is of a general nature that the suit has been wrongly decreed by the Courts below us. This is not a question of Law or substantial question of law.

3. The second substantial question of law also does

not arise because declaration of right under a concurrent finding of fact does not constitute any substantial question of law.

4. The third and fourth questions are inter-connected. Validity of will is under question in these two substantial questions. Lower Appeal Court has recorded a finding that the execution and attestation of will is not proved in accordance with law. This is a finding of fact and consequently these two question also do not arise.

5. The Learned Counsel for the appellant has also tried to impress upon that the custom on the basis of which the declaration has been granted is violative of Article 13 of the Constitution of India. This substantial question of law has not been formulated in the memo of appeal. Moreover, the High Court sitting in the Second Appeal cannot declare a law, ordinance or custom to be violative or ultra vires the constitution or violative of article 13 of the Constitution of India. Hence this question is also beyond the perview and jurisdiction of this court in second appeal. As a result no substantial question arises in this second appeal. Hence it is dismissed with no order as to costs.

Dt: 22.1.1998. (D.C.Srivastava, J)

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